HON'BLE SRI JUSTICE GODA RAGHURAM

W.P.NO. 23662 OF 2006

DATED: 15.2.2007

Between:

The Society of Jesus Mary and Joseph

… Petitioner

and

The Commissioner, MCH and another

… Respondents

HON'BLE SRI JUSTICE GODA RAGHURAM

W.P.NO. 23662 OF 2006

ORAL ORDER:

The Society of Jesus Mary and Joseph seeks a declaration that the action of the respondents in acquiring its land by issuing a notice dated 14/20.6.2005, without tender or payment of compensation for the land earlier acquired, is illegal and arbitrary.

According to the petitioner, the 1st respondent through the 2nd respondent had acquired 325.33 sq.yards in 1982 from the petitioner and paid compensation of Rs.73,873/-. Though the land was acquired in 1982, the compensation was paid in 1986. This was for road widening.

Again, without any proceedings whatsoever in 1999, the 2nd respondent by proceedings dated 17.4.1999 forcibly took over possession of 392.77 square yards and did not pay a red nickel. A notice dated 14/20.6.2005 was issued by the 2nd respondent, calling upon the petitioner to surrender land of a depth of 11.60 square meters (total extent of land to be surrendered not mentioned) for the purpose of "improving the KCP junction at Erramanzil, Hyderabad, to ensure free flow of traffic."

This letter addressed by the 2nd respondent states that the petitioner should extend cooperation to the MCH by giving consent for handing over advance possession for road widening and that the Corporation will pay compensation for structures. The petitioner did not give its consent as solicited by the 2nd respondent and apprehends, on account of the earlier two "sad"

experiences, that the respondent Corporation would forcibly and without following the due process of law, dispossess the petitioner. This apprehension is founded on the circumstance that earlier in 1999 the respondents had forcibly dispossessed the petitioner and had not paid compensation till date.

Though acquisition or dispossession as the case may be is by or on behalf of the Corporation, the entire correspondence to citizens appears to be addressed at the level of the Assistant City Planner. Whether the Assistant City Planner can speak for the Corporation under any extant law and can give out assurances, which are binding on the Corporation under law, is not clear. No provision of law is shown to this court whereunder an officer of the level of the Assistant City Planner can enter into a binding undertaking, on behalf of the MCH. The statute provides that the MCH is represented by the Commissioner of the Corporation. Whether the power has been delegated to the Assistant City Planner under any statutory delegation of powers to function as the Commissioner of MCH for the purposes of entering into undertakings with the citizens, is not clear.

The 2nd respondent's counter equivocally states that the Corporation will acquire the land after obtaining consent from the owner of the property and as per the provisions of the Hyderabad Municipal Corporation Act, 1955. The counter denies that the respondent-Corporation ever threatened the petitioner to take over the affected portion of the land, as alleged by the petitioner.

In any event, despite the inadequate language of the counter of the 2nd respondent, the 2nd respondent appears to state that no dispossession of the petitioner's land would be effected without

following the due process of law. If the petitioner does not give consent, the respondents shall not dispossess the petitioner of its lands, except by following the due process of law. In case any official of the respondent comes upon the land to dispossess, the petitioner is at liberty to complain to the jurisdictional police station, to exercise the right of private defence or to seek prosecution of any officer or the MCH as the case may be, who seek to dispossesses the petitioner of its lands. Since no executive authority is immune to prosecution for criminal trespass under any extant law, any act of dispossession will entail severe personal consequences as well for the public servant apart from claims to damages from the State, in addition to potential major disciplinary proceedings initiable against the public servant concerned.

In the light of such well entrenched checks and balances within the system, no further directions need be issued and the writ petition is disposed of recording these observations to sensitise the respondents as to the legal architecture which prohibits illegal dispossession by public servants.

The writ petition is disposed of with the observations as above. No costs.

GODA RAGHURAM, J

15.2.2007

CVM